STATE OF MICHIGAN

COURT OF APPEALS

GERALD Y. ELLIS,

Plaintiff/Counter-Defendant-Appellee,

v

SHERRI L. ELLIS,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
February 10, 2005

No. 250746
Eaton Circuit Court
LC No. 02-000892-DM

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Defendant appeals by right the trial court's property and alimony award in the parties' judgment of divorce. We affirm.

Defendant first argues that the court erred in valuing the parties' retirement accounts at their after-tax (net) value, rather than their present stated values. We disagree. In reviewing a trial court's property division in a divorce case, we first review the trial court's findings of fact for clear error. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). If the trial court's findings of fact are upheld, we determine whether the dispositive ruling was fair and equitable in light of those facts. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands*, *supra* at 34.

Both plaintiff's and defendant's experts testified that the retirement accounts would be taxed when those accounts were liquidated. Plaintiff's expert testified that to determine the net value of the retirement accounts consistent with the value of the other marital assets, the tax plaintiff paid at the time of liquidation must be taken into consideration. Plaintiff's expert suggested the best way to value the accounts is to use the party's tax brackets at the time of trial, which were approximately 35% for plaintiff and 20% for defendant. Plaintiff also testified that he was "absolutely" going to liquidate his retirement accounts after the trial, either to satisfy the property settlement or to purchase a place to live.

Because the plaintiff presented evidence that a taxable event was planned or contemplated and because the trial court had evidence of what the tax consequences would be at the time of that event, we conclude that the trial court did not err in considering tax consequences in its division of the property. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

Defendant next argues that the trial court erred in declining to award her alimony. Again, we disagree. The decision whether to award spousal support is in the trial court's discretion, and this Court reviews the trial court's award for an abuse of discretion. *Gates*, *supra* at 432.

Here, the trial court analyzed the eleven factors this Court set forth in *Parrish v Parrish*, 138 Mich App 546, 553-54; 361 NW2d 366 (1984). While we need not reproduce the trial court's extensive findings verbatim, a number of the trial court's findings bear mentioning. The court found that the twenty-year marriage was long enough to consider awarding alimony. The court noted that any alimony awarded would be short term because plaintiff, then aged 62, would only work a few more years, while defendant, then aged 44, would work for many more years. The court noted that plaintiff was entirely responsible for the medical insurance and uninsured medical expenses of the parties' two children and paid $181.75 per week in child support. The court found that defendant expected to obtain full-time employment following the divorce. The court also found that defendant, while living in the marital home, could not afford the house or her car payments, while plaintiff had the ability to pay off both assets. The court noted that defendant did not make enough to live on, and even if she did obtain full-time employment, her expenses would still exceed her income. The court concluded that unless the property division were adequate, defendant would need some level of spousal support.

In its dispositional ruling, the trial court noted that although alimony was indicated, defendant's needs would be better served through property division, so it ordered plaintiff to pay the indebtedness on the marital home and defendant's vehicle ($27,900 and $16,000, respectively), and to provide her clear title to each. Defendant was also awarded the parties' cash accounts, a mutual fund asset, a Raymond James account, her own retirement plans, and an insurance policy. Plaintiff received his cleaning business, his car, a life insurance policy, and retirement accounts. He also assumed the indebtedness on the marital home and defendant's vehicle. Plaintiff testified that he would have to liquidate the retirement assets to fulfill the property settlement.

We note defendant's anticipated monthly employment income coupled with the child support she receives from plaintiff exceed her identified monthly expenses. In light of the foregoing, we are not "firmly convinced" that the trial court's decision regarding spousal support was inequitable. *Gates*, *supra* at 433.

Finally, we reject defendant's request for costs and attorney fees on appeal. She cites no authority for her request, and we will not search for any. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 138; 676 NW2d 633 (2003). Nonetheless, we conclude that the

court's spousal support award was adequate enough for defendant to bear the expense of this appeal. *Gates, supra* at 439.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O'Connell